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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Amendment of the Commission's Rules
To Permit Flexible Service Offerings
In the Commercial Mobile Radio Services

WT Docket No.
96-6

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REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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Pursuant to Sections 1.49, 1.415, and 1.419 of the Federal Communications Commission's ("FCC" or "Commission") Rules of Practice and Procedure, 47 C.F.R. §§ 1.49, 1.415, & 1.419 (1995), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully submits the following comments addressing initial comments files in response to the Notice of Proposed Rulemaking ("NPRM") adopted in open session by this Commission on January 24, 1996 in the above-captioned proceeding.

DISCUSSION

Approximately 45 parties filed initial comments in these proceedings. A few parties implied, as did NARUC, that allowing spectrum licensees to use their allocations to provide "fixed wireless local loop services" ("FWLL"), does not require the FCC to sweep such interconnected services under the rubric of "Commercial Mobile Radio Services" ("CMRS").¹

¹ See NYNEX comments at 8, suggesting that the FCC is not required to conclude that, because a service is wireless, it is "CMRS" and thus beyond the State's power to regulate.

Similarly, a number of parties basically supported NARUC's contention that, by suggesting that fixed wireless local loop service, a clear analogue for "fixed" wireline local loop service, be treated as CMRS, the FCC was inappropriately awarding an arbitrary regulatory advantage which would subvert the natural operation of market forces and lead to inefficient deployment of network technologies. ²

Predictably, those implying preemption of State regulation of fixed services is warranted raised the boilerplate industry policy arguments re: the need to promote CMRS services and assure regulatory parity. However, few even attempted a detailed legal analysis to support their positions. This is not surprising. As NYNEX notes on page 8 of its comments, there is no Congressional authority for excluding State authority over FWLL services. Historically, even the FCC has acknowledged, at least in the case of BETRs services, FWLL services simply do not conform to § 153's definition of "mobile services". As OPASTCO correctly points out at 6 of its comments, if a carrier is offering FWLL service, that service should not be considered "mobile"; the fact the service is radio-based is simply irrelevant.

² See, e.g., Ameritech's comments at 4 and 6, where it suggests that, to the extent CMRS providers provide FWLL, they should be considered local exchange carriers; Cf. Bell Atlantic's comments at 3, contending that comparable services should be regulated in the same fashion, regardless of the medium used to provide the service - copper, fiber optics or radio waves; Pacific Telesis' comments at 2 also contending that similar services should be subject to the same regulation regardless of the underlying technology.

Upon close examination, even policy arguments suggesting that "regulatory parity" requires treatment of such FWLL services under the CMRS rubric, with the related preemptive impact on State regulation, are suspect. For example, Sprint Spectrum, at 5 of its comments, argues there is no reason to violate the plain intent of Congress calling for symmetrical regulation of CMRS services, by creating a different scheme of regulation for fixed services offered over CMRS frequencies. A close examination of this sentence reveals the obvious contradictions. First "mobile services" and "fixed" radio based services have always been treated differently. The attempt to compare CMRS, a service based on the statutory definition of "mobile services", with "fixed" WLL services turns the second clause of Sprint's argument into a non sequitur. Second, from an economic perspective, the Congressional goal of symmetrical regulation of like services is better served by treating FWLL like its "fixed" wireline analogues - not by renaming fixed services "mobile" just because they are provided via a CMRS providers' frequency allotment. Third, as a review of the history and text of § 332 will demonstrate, Congress's efforts to impose "regulatory parity" targeted differential FCC regulation of wireless mobile services, not the underlying State regulation of either fixed or mobile wireless services. Indeed, differential State CMRS regulation is expressly contemplated by § 332's reservation of State authority to impose "other terms and conditions."

Finally, Western Wireless Corporation, at page 4 of its comments, and Celpage, Inc. at page 8 of its comments, suggest that new § 253, 47 U.S.C. § 253 (1996), makes "restrictive" State regulation of FWLL services impermissible.

It is clear from § 152(b) and numerous other express reservations of State authority, that Congress did not intend to eliminate State regulation of intrastate services. Indeed, even § 253(b), the section relied upon by these two commentators, expressly reserves State authority to impose rules to protect service quality, universal service and the consumer generally. Because any regulation that applies to a new entrant requires that carrier to incur compliance costs, all such regulation can be fairly characterized as making the provision of the regulated service more difficult. Accordingly, § 253(a) must be read to address only State regulations that have the effect of absolutely prohibiting the provision of the new service, e.g., exclusive franchise requirements. That section should not be read to apply to "restrictive" State rules that merely make provision of a service more difficult, by, *inter alia*, imposing "compliance costs" in a nondiscriminatory fashion upon all providers of that service.

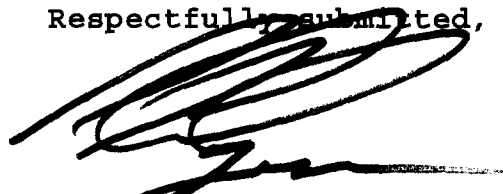
NARUC respectfully suggests that State regulations that currently apply to FWLL services like BETRs cannot, by definition, fall within the § 253 prohibition.

CONCLUSION

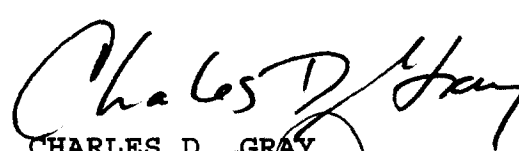
For the reasons stated above, and in our March 1, 1996 initial comments, NARUC continues to "...support technology neutral regulation of services and oppose[] the expansion of the definition of CMRS to include [FWLL] services."

We respectfully request the Commission examine and give effect to our comments.

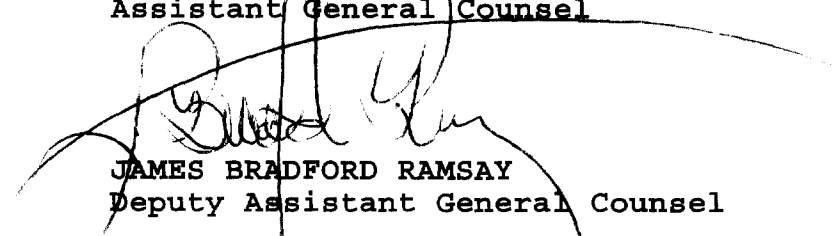
Respectfully submitted,



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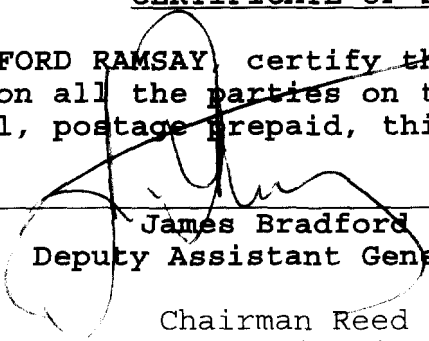
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March 25, 1996

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that I have served a copy of the foregoing on all the parties on the attached service list by 1st class mail, postage prepaid, this 25th day of March, 1996.


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